

REMARKS

Applicant thanks the Examiner for the indication of allowable subject matter in claims 6, 7, 10, 16, 12-14, 23 and 25. Claims 1-5, 7-10, 12-20 and 22-25 are now pending in this application. Of these claims, claims 1, 7, 17 and 24 have been amended, while claim 6 has been deleted.

No new matter has been added to this application. For at least the reasons stated below, Applicant asserts that all claims are now in condition for allowance.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112

Claims 17-20, 22 and 23 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Pursuant the Examiner's suggestion, claim 17 has been amended to delete "the U-shaped member" and provide proper antecedent basis, as shown above. Since claims 18-20, 22 and 23 depend from claim 17, the antecedent basis of the phrase "the U-shaped member" in those claims is also correct. Accordingly, Applicant requests withdrawal of the 35 U.S.C. § 112 rejection.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 1-4 and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Wagler*, U.S. Patent No. 2,573,372. The Examiner states that *Wagler* discloses all of the limitations of the claims. Applicant opposes this rejection, in light of the claim amendments.

Applicants have amended claim 1 to include the subject matter of claim 6, indicated as allowable over the art of record by the Examiner. Specifically, *Wagler* fails to disclose or suggest a leg that is an elongated U-shaped member comprising a closed end and an open end defined by two

portions of the U-shaped member; the upper ring of the plant support attached to said one leg proximate the closed end such that a loop is formed above the upper ring by the closed end of the leg; and the ends of the two portions of the U-shaped member adapted to engage the ground.

Accordingly, *Wagler* fails to disclose or suggest all of the limitations of claim 1. Further, since claims 3, 4 and 8 depend from claim 1, *Wagler* fails to disclose all of the limitations of those claims for the same reasons. Thus, the rejection of claims 1-4 and 8 is improper, and Applicant requests withdrawal of the rejection.

Claims 17-19 and 22 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Johnson*, U.S. Patent No. 3,148,850. The Examiner states that *Johnson* discloses all of the limitations of claims 17-19 and 22. Applicants oppose this rejection in light of the above claim amendments.

Johnson discloses a folding easel for supporting wreaths or cards, not a support for plant containers, such as pots, as claimed by Applicant. Further, the Examiner mischaracterizes the term "rings." *Johnson* does not disclose rings, but rather loops (21) on the end of sections of easel for attachment to the looped ends of other sections. Applicant's rings are shaped so as to accommodate the insertion of a plant container within the interior of the rings, as claimed. *Johnson's* loops will not permit the insertion of a container within its interior.

Secondly, *Johnson* fails to disclose a ledge, defined as a bend in support leg by Applicant, that is positioned below the position where the leg attaches to the lower ring, as claimed by Applicant.

Johnson fails to disclose or suggest all of the limitations of claim 17. Claims 18, 19 and 22 depend from claim 17 and include all of the limitations of claim 17. *Johnson* fails to disclose or suggest all of the limitations of claims 18, 19 and 22. Accordingly, the rejection of claims 17-19 and 22 is

improper. Applicant requests withdrawal of the rejection of these claims.

Claim 24 is rejected under 35 U.S.C. § 102(b) as being anticipated by *Briggs*, U.S. Patent No. 1,359,026. The Examiner states that *Briggs* discloses all of the limitations of claim 24. Applicant opposes this rejection in light of the claim amendments above.

Briggs fails to disclose rings, and instead discloses loops (2) on the end of sections of easel for attachment to the looped ends of other sections. Applicant's rings are shaped so as to accommodate the insertion of a plant container within the interior of the rings, as claimed. *Briggs'* loops will not permit the insertion of a container within its interior.

Briggs fails to disclose or suggest all of the limitations of claim 24. Accordingly, the rejection of claim 24 is improper. Applicant requests withdrawal of the rejection of these claims.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wagler*, U.S. Patent No. 2,573,372 in view of *Elliott*, U.S. Patent No. 5,640,802. Applicant opposes this rejection in light of the claim amendments above.

As stated in the 35 U.S.C. § 102 rejections above, claim 1 has been amended to incorporate indicated allowable subject matter. Since claim 5 depends from claim 1, it includes all of the limitations of claim 1. Since claim 1 is allowable, as asserted above, claim 5 is allowable over the art of record from the same reasons.

Accordingly, Applicant asserts that the combination of *Wagler* and *Elliott* fails to disclose all of the limitations of claim 5. Therefore, Applicant requests withdrawal of the rejection of claim 5.

Claims 9 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wagler*, U.S. Patent No. 2,573,372. Applicant opposes this rejection for the same reasons as stated in the rejection of claim 5 above. Claims 9 and 15 depend from claim 1, and include all of the limitations of claim 1. Since claim 1 is allowable over the art, claims 9 and 15 are allowable over the art of record from the same reasons. Accordingly, the rejection of claims 9 and 15 is improper. Applicant requests withdrawal of the rejection of claims 9 and 15.

Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Johnson*, U.S. Patent No. 3,148,850 in view of *Elliott*, U.S. Patent No. 5,640,802. The Examiner states that it would have been obvious to one of ordinary skill in the art to modify *Johnson* to provide a support member made of plastic, as taught by *Elliott*. Applicant opposes this rejection in light of the claim amendments above.

As stated in Applicant's remarks to the 35 U.S.C. § 102 rejection of claim 17, *Johnson* fails to disclose all of the elements of claim 17. Since claim 20 depends from claim 17, it includes all of the limitations of claim 17. In light of the above amendments to claim 17, *Johnson* fails to disclose or suggest all of the limitations of claim 20. Accordingly, the rejection of claim 20 is improper. Applicant requests withdrawal of the rejection of claim 20.

Conclusion

For at least the above indicated reasons, Applicant submits that all pending claims are distinguishable over the art of record and now in condition for allowance and respectfully requests that a Notice of Allowance be issued in this case. If the Examiner believes that a conference would be of value in expediting the prosecution of this application, the undersigned can be reached at the telephone number listed below.

Attached is a marked up version of the changes made to the specification by the current amendment. The attached page is captioned "Version with markings to show changes made."

Should any additional fees be necessary, the Commissioner is hereby authorized to charge or credit any such fees or overpayment to Deposit Account No. 50-1901 (Reference No. 20386/305).

Respectfully submitted,

By W. Glenn Edwards

W. Glenn Edwards, Reg. No. 44,426
Customer No. 34205
Oppenheimer Wolff & Donnelly LLP
45 South Seventh Street
3400 Plaza VII
Minneapolis, MN 55402
Telephone: (612) 607-7278

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE TITLE

Please amend the title as follows:

IN-GROUND CONTAINER STABILIZER[WIRE CAGE] FOR NURSERY ITEMS

IN THE CLAIMS

Please amend claims 1, 7, 17 and 24 as follows:

1. A stackable plant support comprising:

an upper ring;

a lower ring;

at least one leg attached to the upper ring and lower ring, the leg adapted to support the upper ring and lower ring and engage the ground, the leg comprising a ledge shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground, the ledge defined by a bend in said leg, the ledge located below the position where the lower ring attaches to the leg; [and]

wherein said at least one leg is an elongated U-shaped member comprising a closed end and an open end defined by two portions of the U-shaped member;

the upper ring is attached to said at least one leg proximate the closed end such that a loop is formed above the upper ring by the closed end of the leg;

the ends of the two portions of the U-shaped member are adapted to engage the ground; and

the plant support shaped to enclose plants and support plant containers.

Please cancel claim 6.

7. The stackable plant support of claim 1[6] wherein the ledge is defined by[has] a bend in the two portions of the U-shaped member.

17. A support member for a plant support apparatus, the support member comprising:

at least one leg attachable to an upper ring and a lower ring, the leg adapted to support the upper ring and lower ring and engage the ground, the upper ring and lower ring shaped so as to accommodate the insertion of a plant container within the rings;

the at least one leg comprising a ledge shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground;

and

wherein the ledge is defined by a bend in the at least one leg, the ledge located below the position where the lower ring attaches to the at least one leg[U-shaped member].

24. A stackable plant support comprising:

at least one ring, the at least one ring is shaped so as to permit the insertion of a plant container within;

at least one leg attached to said at least one ring, the leg adapted to support said at least one ring and engage the ground, the leg comprising a ledge shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground, the ledge defined by a bend in said leg, the ledge located below the position where said at least one ring attaches to the leg;

wherein said at least one leg is an elongated U-shaped member comprising a closed end and an open end defined by two portions of the U-shaped member;

the at least one ring is attached to said at least one leg proximate the closed end such that a loop is formed above the ring by the closed end of the leg; and

the ends of the two portions of the U-shaped member are adapted to engage the ground; and

the plant support shaped to enclose plants and support plant containers.